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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Extension of the Five-Year Build-Out
Period for BTA Authorization Holders
in the Multipoint Distribution Service

) MM Docket No. 01-109
)
) MM Public Notice
) DA No. 01-1072

COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom") hereby submits its Comments in response to the Commission's *Public Notice* proposing to extend by two years the current five-year build out requirement applied to Basic Trading Area ("BTA") authorization holders in the Multipoint Distribution Service ("MDS").¹ WorldCom urges the Commission to extend the build-out period until April 6, 2006 – five years from the date on which the Commission started granting authority for MDS licensees to provide two-way service. At a minimum, the Commission should immediately grant, as an interim measure, the proposed two-year extension. In all events, the Commission should initiate a rulemaking proceeding to rationalize the build-out requirements so that they make sense for two-way broadband services, and to harmonize these requirements with the requirements applied to other point-to-multipoint fixed wireless services.

WorldCom is one of the two largest holders of MDS spectrum in the United States, having recently invested over \$1 billion for the rights to use MDS/ITFS (Instructional Television Fixed Service) spectrum in over 100 markets covering more than 31 million households (approximately 30% of all U.S. households) – which equates

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to more than 80 million people across the United States. WorldCom made this investment in MDS/ITFS spectrum rights specifically in order to provide facilities-based high-speed Internet access. WorldCom is now actively deploying such services, and will be providing the first, or the first competitive, broadband “pipe” to consumers in areas unserved or underserved by other broadband technologies.

I. WorldCom Supports Extending the Build-Out Period

WorldCom urges the Commission to extend the build-out period for MDS BTA authorization holders until April 6, 2006 – five years from the date on which the Commission started granting authority for MDS licensees to provide two-way service. As the Commission correctly recognized in its *Public Notice*, the service rules for MDS spectrum have changed dramatically since the BTA spectrum was auctioned and licensed in 1996. At that time, it was expected that the spectrum would be used to deliver one-way video programming.² Five years later, MDS licensees are using their spectrum to deploy two-way high speed broadband access. Thus, WorldCom fully agrees with the Commission that “requiring BTA authorization holders to meet the five-year construction build-out requirement would be unreasonable, would not promote efficient use of the spectrum, and would be contrary to the public interest.”³

It is important to review the significant changes, and the timing of those changes, that have occurred since 1996 in the service rules applicable to MDS licensees.

¹ *In the Matter of Extension of the Five-Year Build-Out Period for BTA Authorization Holders in the Multipoint Distribution Service*, *Public Notice*, DA 01-1072, rel. April 25, 2001.

² In the very first sentence of the Report and Order establishing the auction and build-out rules, the Commission proclaimed: “[b]y this action, we adopt rules to facilitate the development and rapid deployment of wireless cable services.” *See Report and Order on Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service (“MDS BTA Auction Order”)*, 10 FCC Rcd 9589, MM Docket No. 94-131, rel. June 30, 1995, at ¶ 1.

³ *Public Notice*, DA 01-1072 at ¶6.

Significantly, in March 1997, the Wireless Cable Association International (“WCA”)⁴ and over 100 participants in the wireless cable industry filed a petition for rulemaking requesting that the Commission authorize MDS and ITFS licensees to provide two-way services.⁵ This was a critical step in the revolutionary change of the use of this spectrum from wireless cable to high speed Internet access. In September, 1998, the Commission issued its Report and Order granting WCA's request and authorizing use of the MDS and ITFS spectrum for two-way services.⁶ However, it was not until August 2000 that the Commission opened the first filing window for MDS and ITFS licensees to seek license modifications to provide two-way service. And it was not until April 6, 2001 – less than five weeks ago – that the Commission began granting the first two-way authorizations.

The initial five year build-out period expires on August 16, 2001, and compliance with the build-out requirement must be demonstrated sixty days prior to that date, *i.e.* by June 18, 2001.⁷ Clearly, the Commission cannot expect WorldCom or other MDS licensees to build out all of their two-way systems within four months of the date of grant of the first two-way authorizations. From the time that WCA filed its petition in 1997, and certainly from the time the Commission authorized two-way services in 1998, it would not have served the public interest, nor made any commercial sense, for MDS licensees to continue deploying one-way wireless cable systems simply to satisfy the five-year build-out requirement.

⁴ WCA has subsequently changed its name to the Wireless Communications Association International to reflect the change in the use of the spectrum.

⁵ Petition for Rulemaking to Amend Parts 21 and 74 of the Commission's Rules to Enhance the Ability of Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Two-Way Transmissions, *Public Notice* RM 9060, DA 97-637 (rel. March 31, 1997).

⁶ *In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, Report and Order*, 13 FCC Rcd 19112, MM Docket 97-217, FCC 98-231, rel. September 25, 1998.

⁷ See 47 C.F.R. §21.930(c)(2).

WorldCom submits that, for all practical purposes, the build-out clock should be re-started as of April 6, 2001. By applying the same five-year build-out period initially applied to MDS BTA authorization holders, the Commission should permit MDS licensees to complete construction of their newly authorized two-way facilities by April 6, 2006.⁸

A five year extension will not delay deployment of broadband access using the MDS spectrum. WorldCom is already providing commercial fixed wireless broadband services in Jackson, MS; Baton Rouge, LA; and Memphis, TN. With the grant of many of WorldCom's applications for two-way authority, WorldCom will now be able to launch service in many more markets – and WorldCom is moving rapidly to do so.

At a minimum, the Commission should immediately grant, as an interim measure, the two-year extension proposed in the *Public Notice*. Such an extension will give MDS licensees additional time to continue deployment of two-way broadband access systems, while the Commission considers in a rulemaking proceeding appropriate build-out requirements for MDS BTA licensees deploying such systems.

II. The Commission Must Modify the Build-Out Requirements for MDS BTA Licensees

WorldCom urges the Commission to initiate a rulemaking to rationalize the MDS BTA build-out requirements so that they make sense for two-way high-speed

⁸ If the Commission grants the requested five year extension, the aggregate build-out period would still be less than ten years. In other point-to-multipoint fixed wireless services, including WCS, LMDS, 24 GHz and 39 GHz, the Commission has given licensees the entire license term (10 years, in most cases) in which to provide "substantial service."

broadband access services, and to harmonize these requirements with the standards applied to other point-to-multipoint fixed wireless services.

The current build-out standard requires MDS BTA authorization holders to “provide signals ... that are capable of reaching at least two-thirds of the applicable service area, excluding the populations within protected service areas [PSAs] of incumbent stations.”⁹ WorldCom submits that it makes no sense, and is unfair, to exclude service to populations within incumbent PSAs where the BTA licensee and the PSA licensee are the same or affiliated entities – which is typically the case.¹⁰ In a two-way environment, operators use a combination of channels – some available only pursuant to their BTA licenses and others available only pursuant to their PSA licenses – in order to provide service across their entire service area. WorldCom urges the Commission to modify its rules so that the licensees’ entire service area is examined in determining whether the build-out requirements have been met.

The current build-out requirements are also wholly inconsistent with the build-out requirements applied to other point-to-multipoint fixed wireless services. The Commission applies to WCS, LMDS, 24 GHz and 39 GHz licensees a requirement that “substantial service” be provided at the end of the initial license term. There is no logical reason why MDS BTA licensees should be subjected to far more stringent build-out requirements than other fixed wireless licensees. Therefore, WorldCom urges the

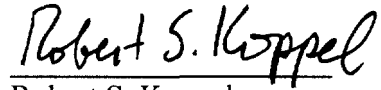
⁹ 47 C.F.R. § 21.930(c)(1).

¹⁰ WorldCom further notes that the text of the MDS BTA Auction Order does not address, and therefore does not support, the exclusion of service to populations within the incumbent’s PSA. *See MDS BTA Auction Order* at ¶ 43.

Commission to modify its MDS BTA build-out requirements to conform with the requirements applied to other point-to-multipoint fixed wireless services.

Respectfully submitted,

WORLDCOM, INC.

A handwritten signature in black ink that reads "Robert S. Koppel". The signature is written in a cursive style with a horizontal line underneath the name.

Robert S. Koppel

Vice President

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May 9, 2001

CERTIFICATE OF SERVICE

I, Tally Frenkel, hereby certify that on this 9th day of May 2001, a true and correct copy of the foregoing Comments was served via hand delivery upon the following:

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